

DEPARTMENT OF DEFENSE BLOGGERS ROUNDTABLE BRIEFER: GENERAL THOMAS HARTMANN,
LEGAL ADVISOR TO THE CONVENING AUTHORITY, DOD OFFICE OF MILITARY COMMISSIONS
SUBJECT: CHARGES BROUGHT AGAINST AHMED KHALFAN GHAILANI IN THE 1998 ATTACK ON
THE U.S. EMBASSY IN TANZANIA MODERATOR: CHARLES "JACK" HOLT, CHIEF, NEW MEDIA
OPERATIONS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE PUBLIC AFFAIRS TIME:
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MR. HOLT: General Hartmann, thanks for joining us for the Bloggers
Roundtable today.

GEN. HARTMANN: Most welcome.

MR. HOLT: All right, sir. And do you have an opening statement for
us?

GEN. HARTMANN: Well, earlier today the Convening Authority received
sworn charges against Ahmed Khalfan Ghailani of Zanzibar, Tanzania. He will be
served with those charges in the next couple of days after the completion of the
translation into his native language, Swahili. These charges are based upon
facts that are alleged in the charge sheet regarding his involvement in the
attack on the United States embassy in Dar es Salaam, Tanzania on August the
7th, 1998.

Six of the nine charges carry the maximum penalty of death, and the
chief prosecutor has recommended that the case be referred as capital, thereby
bringing the case as a -- potentially a death penalty case. And, as your fellow
bloggers may recall, on August the 7th, 1998 -- exactly eight years after the
United States began deploying troops to Saudi Arabia in response to the Iraqi
invasion of Kuwait, twin truck bombs detonated in front of the American
embassies in Kenya and Tanzania. Within minutes of the first attack on our
American embassy in Kenya, the American in Tanzania was attacked, killing 11
innocent people, injuring hundreds, and causing substantial damage to the
embassy.

The sworn charges that have been brought against Mr. Ghailani allege
his participation and preparation in the planning of the attack, and there are a
number of instances that are laid out in the charge sheet, in the conspiracy
charge. In fact, there are 43 overt acts that are listed, but among those are
the following:

The purchasing of TNT, detonators, and detonation cord on a number of
occasions; and transporting bomb components to Dar es Salaam; moving the bomb
components to safehouses in and around Dar es Salaam; assisting in the purchase
of the truck that was used for the bombing; facilitating the purchase of the
oxygen and acetylene cylinder tanks which were -- with the TNT, were used for

the bomb components; escorting the bomb engineer to various places; scouting the American embassy in Tanzania with the suicide bomb driver; meeting with co-conspirators in Nairobi before the bombing; and then fleeing the region exactly the day before, on August the 6th, 1998.

The charges are -- there are nine charges: Mr. Ghailani is charged with murder in violation of the law of war; murder of protected persons; attacking civilians, attacking civilian objects; intentionally causing serious bodily injury; destruction of property in violation of the law of war; and terrorism. And he's charged with conspiracy to commit all of those offenses. And then, after the bombing, the charge sheet alleges that Mr. Ghailani continued to support al-Qaeda in a variety of ways, including as a document forger, physical trainer, and as a body guard for Osama bin Laden.

Six of those charges, as I mentioned, carry the potential for the death penalty. -- (inaudible) -- Mrs. Crawford, now that the Convening Authority has received the charges, I will complete a legal review to determine a number of factors, and make (my ?) recommendation to Judge Crawford with regard to referral, the capital nature of the cases, and how the case should proceed generally. And she will evaluate that; and in her sole discussion (sic), determine whether it will be referred, and whether it will be a capital case. And I'd like to emphasize how important it is that we understand the process here because that's -- that's the most fundamental aspect -- (inaudible) -- processes and procedures we make available to the accused in these cases -- in this particular case, are extraordinary, in terms of international law, historical international law, Nuremberg, the existing International Criminal Tribunals, and even our own American and military court systems.

The accused in these cases can elect not to testify at trial, and have no adverse inference drawn from that; can be represented by detailed military counsel at no cost to him, as well as by civilian counsel of his own selection, at his own expense. He examines all the evidence used against him. Not one piece of evidence -- not one piece of evidence goes to the jury or the finder-of-fact without the accused review, examination, cross-examination, confrontation and challenge.

The right to obtain all the evidence; and to call witnesses on his own behalf, including expert witnesses -- (inaudible) -- examination; the right to be present during the presentation of evidence; the right to have at least five members on a non-capital case, and 12 members on a capital case, two-thirds majority on a non-capital case, and four levels of post-trial review -- four levels. In the International Criminal Tribunals there's one level of review, and the Convening Authority, which is one of those four levels, only exists in the military. So even in our civilian system, they do not have the right to have post-trial review by the Convening Authority.

In addition, in our military system, the accused would have a court review -- an intermediate military court review it. But, in this case, every accused that is found guilty gets a legal review by the Court of Military Commission Review. In the military system, that only occurs if you achieve a certain level of sentence -- a certain severity of sentence. So that's extraordinary.

In Nuremberg, "beyond a reasonable doubt" standard didn't even apply. There were no appeal rights at Nuremberg. Here we have four levels of post-trial review -- amazing. And if the prosecution should lose a case in acquittal, there's no appeal. In the international criminal tribunals there are

appeal rights for the prosecution off of a not-guilty finding. So I hold this - I hold these, I'll hold these rights and protections up to any standard, historical or present, in the international criminal tribunal. It's simply amazing the rights that we provide to these people.

Having said all of that, I emphasize to you that it's -- these are sworn charges only, and allegations only, of violation under the Military Commission Act. And the accused is, and will remain, innocent unless proven guilty beyond a reasonable doubt -- emphasizing yet again how important it is that we give fair rights to achieve a just result in a system of extraordinary justice here. So that's what I'd like to tell you.

MR. HOLT: All right, sir, thank you very much. And Andrew, you're first on-line, so I'd like to remind you to please state your name and the publication for which you're writing. So, Andrew, go ahead.

Q General, Andrew Lubin, from the Military Observer. Thank you for taking the time today.

GEN. HARTMANN: Hi, Andrew.

Q Sir, in the past couple months -- and I can't cite names and dates, unfortunately, and people -- but some of the defense attorneys -- the military defense attorneys have objected to the way that they've been treated. They weren't -- (inaudible) -- able to get access to the information on a timely basis.

Does this Mr. Ghailani have an attorney yet? Would he be a civilian, or a military attorney?

GEN. HARTMANN: That's a good question, Andrew. In terms of his attorney, he -- as of the swearing of the charges, he will have the right to a detailed military counsel. To my knowledge, he has not yet received the detailed military counsel.

The chief defense counsel has not made that available yet.

In terms of the matters that have been dealt with in the normal discovery processes, there are normal debates on discovery in normal criminal proceedings -- domestic criminal proceedings, military criminal proceedings, as there are in civil proceedings. So, I wouldn't -- I'm not surprised by the existence of debates between the trial counsel and the prosecutor, and that the judge has to step in occasionally to deal with those.

We have rules that are set out, in detail, on the rights of discovery of the defense, in the process; and the judge is doing what judges do -- establishing fairness and justice in the system to make sure that the accused receives the discovery he should receive. So, we're -- I think that's another indication of the fairness of the system, Andrew.

Q Well, does he have a -- does he have a military defense attorney assigned to him now, or is he --

GEN. HARTMANN: No, not yet. He'll have one -- I expect he'll have one. Today is the beginning of the sworn charges, so he's entitled one today. The chief defense counsel learned of the swearing of the charges today just like you are.

Q Okay. So, then basically there has been no discovery since (today, though ?), -- (inaudible) -- since he doesn't have an attorney representing him?

GEN. HARTMANN: That's correct, because the charges -- the beginning of the legal process didn't start until today.

Q Okay, thank you.

MR. HOLT: Okay.

And, Bryant?

Q Thank you.

General, thanks for being here today. GEN. HARTMANN: Bryant (sp).

Q I'm from Military.com.

Sir, last year a former prosecutor -- (inaudible) -- criticized the Guantanamo process because it left the door open to using evidence gotten through coercion. Then in December you had a Navy Jag officer resign because of the waterboarding issue, and the fact that you felt unable to even call waterboarding of an American pilot torture. And now you have this motion filed that's going to allege that Gordon England wanted to use the trials for political mileage in time for the elections.

Is military justice, in this case, going to be a casualty of these proceedings?

GEN. HARTMANN: Absolutely not. This is an extraordinary process, and you are not going to find a better engine of truth than a trial -- whether it's a civilian trial, or a military trial, or the Military Commissions. This is modeled after the standard American trial system. And the accused will face his accusers in the court room.

He will see all the evidence used against him on issues of guilt and innocence; he will see everything that goes to the trier of fact, there is no -- even if it's classified evidence. So this system is extraordinarily fair. This is not anything like a casualty of anything, this is a monument to the fairness of the American justice system. We're providing to these people virtually the same rights -- and in some cases more rights, than we provide to our own soldiers, sailors, airmen and marines.

On the issues of what evidence is admissible and not-admissible, that is to be dealt with in the court room. That's where the accused is best armed to deal with this. The manner of how he gets evidence in; how he challenges evidence; how he reviews the facts; how he gets the right to research; how he gets the right to confront evidence; to call witnesses, and so forth.

All those rights that are fundamental, that you think are fundamental, to a civilian process, to a military process, those are the rights that these accused -- and they're accused of violating the laws of war, they're getting virtually the same rights that I would get if I were in a court. And that is extraordinary. And if you think back on Melvin Belli -- I hope some of you know that name, or F. Lee Bailey, some of our greatest --

Q I'll -- I'll admit to that age.

GEN. HARTMANN: Okay. Well, he -- you know, Melvin Belli is dead, so I hope you didn't miss that story.

MR. HOLT: (Laughs.) GEN. HARTMANN: But, in any case, those guys have pointed out how extraordinary the military system is, in terms of the rights it makes available to the defendant. And those are the same kinds of protections we're providing in this case. This is really a mirror of the military justice system, with some slight adjustments for the fact that we're dealing with national security cases in many instances.

But the rights and protections we're providing to these accused, and the openness of trials -- I mean, you've got 120 members of the Press who have been down there; the non-governmental organizations; the U.N. rapporteur; the reporting; the release by the judges of motions and rulings. I mean, it's extraordinary the lengths we are going to -- number one, to have a fair system, and to make it available to the world.

MR. HOLT: And, Diane?

Q Yes, hello. This is Diane Ammen, University of California, and I blog for Slate's Convictions Blog and also Int-Law Girls (sp), which is an international law blog.

GEN. HARTMANN: Hi, Diane.

Q Is this the first set of capital charges that is being referred to the Commission?

GEN. HARTMANN: No, Diane, it is not. The 9/11 charges that were sworn on February the 11th, the chief prosecutor recommended that those cases be brought as capital cases as well. So we are reviewing that in the Convening Authority's office, and we will continue to evaluate those and allow Judge Crawford to make a referral decision. Judge Crawford, in that case, will -- as she does in this case, make a decision on what to refer, how to refer the charges, and whether to refer them as capital.

So, this is not the first, this is -- be the seventh accused that would be -- have sworn charges as a referral. None of them has been referred to trial yet.

Q Right.

GEN. HARTMANN: -- and that -- we are awaiting referral on the 9/11. I haven't completed my legal review to Judge Crawford yet, and then we'll see what happens on this one.

Q So that, seven of -- out of, what I understand, of 15 that has got at least to this stage, are potentially capital cases, is that right?

GEN. HARTMANN: Those seven that I mentioned have been recommended by the chief prosecutor as cases he recommends be referred as death penalty cases, yeah. Q Very good. Thank you. And I guess my other question is, I've downloaded the Press release on these charges, and as I see it, all of the

charges against this detainee relate to the 1998 bombings in Tanzania, is that right?

GEN. HARTMANN: No, all but one. Eight of the nine charges deal with the allegations related to the bombing of our American embassy on August the 7th, 1998 in Dar es Salaam, Tanzania. The last one is called material support to terrorism. It deals with the issue of his activities in support of al-Qaeda -- his alleged activities -- important that you get that, alleged activities, with regard to al- Qaeda after the bombing.

And those deal with his work as a -- alleged work as a document forger; as a physical trainer; and as a bodyguard for Osama bin Laden.

And I think if you look at the Press release, in paragraph -- the fourth paragraph at the bottom of the page, it talks about this one as providing material support to terrorism, Diane.

Q I see that. It wasn't bullet pointed, and so I didn't realize it was an additional charge that -- reading it through the first time. Thank you.

GEN. HARTMANN: Sure.

Q I guess my question then is, is there any concern about centering a prosecution on events in 1998 of -- in a commission that was established with more central reference to 9/11?

GEN. HARTMANN: Well, these are war crimes trials, Diane, and they focus not on any particular event.

They are -- they were not designed for 9/11. They're designed to deal with alleged war crimes in connection with -- (inaudible) -- in connection with the global war on terror. So, one shouldn't draw the conclusion that they were designed for 9/11. They were designed to deal with crimes arising out of the global war on terror, in connection with the Military Commission Act, the passage of the Military Commission Act.

So this is completely consistent with that process.

Q Great. Thank you.

MR. HOLT: Okay.

And, Charissa (sp)?

Q Hello, this is Charissa Pecard (sp) with Military.com.

GEN. HARTMANN: Hi, Charissa (sp).

Q Hi. I was just wondering -- and I think Bryant (sp), sort of, touched on this, I, unfortunately, have not been able to look at the Press release yet, so I don't know if you touched on this already. But, how much of the evidence against the defendant, if any, is going to be based upon admissions, potentially, that he made while detained in Guantanamo Bay?

GEN. HARTMANN: Charissa (sp), I don't comment on -- and neither should anybody -- comment on the evidence that, now that the trial process has begun,. That's the purpose of a trial. And 95 to 99 percent of a trial is focused on

the gathering of the facts, and the introduction of facts in evidence. So that will all be dealt with in the court room. But the -- and that's the prosecutor's responsibility and the defense's responsibility to challenge it to the extent they think there are issues with regard to admissibility, and so forth.

Q Okay, because I think that's where I guess some of the concerns have been raised that, you know, if there are any admissions I guess there might be some concerns about how those may have been obtained. And I'm not saying one way or the other, you know, about that. GEN. HARTMANN: Sure.

Q You know, and then the -- you know, there's a lot of international organizations -- and even national, within the United States, have any organizations shown an interest in representing him, civilian-wise, you know, any kind of a legal organization? You know, I know that he's -- or, can, I mean, can he get a civilian attorney to represent him in this process to work as co-counsel with a military attorney?

GEN. HARTMANN: That's an excellent question, Charissa (sp). In this process, the accused receives a detailed military counsel upon the swearing of charges, but he can also have civilian counsel of his own selection at his own expense.

And in the Hamdan case, for example, that accused has five counsel at his table. The detailed military counsel that I mentioned -- a Department of Defense civilian counsel, and three other counsel -- one professor from Emory University, and two partners in a law firm on the West Coast.

So, yes, they can have civilian counsel to support the defense team if they -- (inaudible) -- in real live cases they have had them. So that's a -- there's reality to that question. I appreciate your asking it.

Q Okay. Okay, great. And you don't know if anybody has approached him yet about this? I mean, he is approachable? There are ways we can get in touch with him?

GEN. HARTMANN: Yeah, there are ways to get yourself -- as a defense, civilian defense counsel, get into a military pool. You communicate with the chief defense counsel, and go through the process that's been set up for that. But, absolutely, it's available.

Q Okay, that's great. Thank you very, very much.

GEN. HARTMANN: You're -- you're most welcome.

MR. HOLT: All right, any -- do we have any follow-up questions?

Q Yeah, I do, Jack.

MR. HOLT: Okay.

Q General, Andrew Lubin again. Two quick questions here: First of all, the deaths were suffered by the Tanzanians and Kenyans. While we did capture him in Eastern Pakistan, do the Tanzanian or Kenyan governments have any interest in prosecuting him along with us?

GEN. HARTMANN: I don't know the answer to that, Andrew. It's a good question, but there's been no indication to me that either country has sought to prosecute. Q Thank you. And a follow-up question, you mentioned 120 members of the Press. What's it take to be number 121 or number 122? Sporadically, we've been told that some people from this panel might be able to attend. Can you tell us about how that might work out?

GEN. HARTMANN: Yeah. I think that we'll refer you to Commander Gordon (sp). We have a Press team as well -- public relations team in the Commissions. But Commander Gordon (sp) is the person that you deal with in order to get a trip down to Guantanamo.

Q Great. Thanks very much.

GEN. HARTMANN: You're welcome.

MR. HOLT: All right..

All right, General, we've just got a few seconds left here. Any closing thoughts or closing comments for us, sir?

GEN. HARTMANN: Well, I appreciate the time to present it to you, and I hope that as you see the reality of these trials continue to move forward -- we're increasing the pacing of the trials and we're continuing to move the trials forward -- consistent with the evidence, the fact analysis, the law, the coordination between the intelligence, law enforcement, and legal communities, I hope that you will see the extraordinary length to which the Commission's process is making protections available to these accused, protections that are virtually -- that exceed those in other international criminal tribunals, that exceed Nuremberg, and that are certainly very, very similar to those that we provide to our soldiers, sailors, airmen and marines, and I think everybody just thinks they're a treasure.

If you get to meet our soldiers, sailors, airmen or marines, thank them. I had the opportunity to deal with them at Guantanamo, to deal with the Joint service effort, and it's just eyewatering the things that our young men and women do to serve this nation and protect it. So thank a soldier, sailor, airman or marine when you see them. And understand that the rights that we're giving, the protections we're giving to people accused of war crimes are virtually the same rights you're giving to them.

MR. HOLT: Thank you very much, sir.

Brigadier General Thomas Hartmann, legal adviser to the Convening Authority for the Department of Defense Office of Military Commissions here in Washington, D.C.

Thank you very much for joining us, sir, and we look forward to speaking with you again.

GEN. HARTMANN: Okay, Jack, thanks so much. END.